

No. 15,416

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

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VICTOR MANUEL GIL,

*Appellant,*

*vs.*

ALBERT DEL GUERCIO, as District Director of the Immigration and Naturalization Service at Los Angeles, California,

*Appellee.*

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APPELLANT'S PETITION FOR A REHEARING.

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## APPELLANT'S PETITION FOR A REHEARING.

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*To the United States Circuit Court of Appeals for the Ninth Circuit and to the Honorable Dal M. Lemon, Stanley M. Barnes and Frederick G. Hamley, Circuit Judges:*

Victor Manuel Gil, appellant in the above described appeal, respectfully petitions the court for a rehearing after decision rendered June 17, 1957.

The original hearing in this matter was had on June 3, 1957, with decision as above.

## Summary Statement of Grounds Upon Which a Rehearing Is Requested.

### I.

A court in reviewing a decision of an administrative agency must take the decision in full as it is written. The appellant respectfully submits that this Honorable Court erred in determining that concededly improper critical words were not prejudicial and may be disregarded as surplusage. The uncertain effect of incompetent matter which renders harm and violates substantial rights (assumption of matter not of record) makes the hearing unfair.

*Bridges v. Wixon*, 144 F. 2d 927 (9th Cir.), 326 U. S. 135;

*Eagles v. Samuels*, 329 U. S. 304;

*Bilokumsky v. Tod*, 263 U. S. 49.

### II.

The regulations which govern deportation hearings and proceedings are the due process of law guarantees of the United States Constitution. There is no due process or compliance with 8 C. F. R. 151.3 which defines the record as the testimony and exhibits and other papers and requests filed in the proceedings. Attention is directed to the fact that said regulation does not grant consideration to something outside the record as was done here. 8 C. F. R. 151.5(a) states that the decision shall set forth a summary of the evidence adduced. This can only mean what it says. The failure to follow the regulations, as was done here, results in an unfair hearing.

*United States v. Perkins*, 79 F. 2d 533, 534;

*Moh See v. White*, 242 Fed. 868, 871 (C. C. A. 9);

*Sibray v. United States*, 282 Fed. 795.

III.

This Honorable Court can only judge the hearing by what the officer did. Not by what he might have done, been justified in doing or EXCUSED from having done.

*S. E. C. v. Chevers*, 318 U. S. 80, 87, 93-94.

IV.

Appellant at page 13 of his opening brief posed the question that is very material to a correct decision in this matter and which appellant respectfully submits this Honorable Court failed to answer. The question was: CAN ONE SUBORDINATE OFFER VOLUNTARY DEPARTURE, AND ANOTHER SUBORDINATE DENY SAME WHEN THERE ARE NO CHANGE OF CIRCUMSTANCES, SAVE AND EXCEPT THE EXERCISE OF THE FUNDAMENTAL RIGHT TO COUNSEL?

Appellant respectfully submits that this Honorable Court erred in failing to rule thereon and in further failing to rule on whether the so-called additional reason was inappropriate. Appellant urges that it is mandatory to consider the entire agency decision in determining the issue. The entire force that the Attorney General delegates to act for him in granting or denying the discretionary relief is presumed to know and be familiar with *Matter of M*, 4 I & N Dec. 626. It was not special knowledge restricted to the inquiry officer. If the present decision is permitted to stand, there will be no manner in determining when there is fairness.

### Conclusion.

Appellant respectfully submits that it is imperative that the entire agency decision, without chopping off deleterious acts as surplusage, as was done by this Honorable Court, must be the basis for due process.

A fundamental and efficacious question of propriety of delegation of power by the Attorney General is at stake as well as the orderly and fair exercise of the right to voluntary departure for an alien.

Only a granting of a rehearing and the reversal of the decision of June 17, 1957, can undo the injustice done appellant.

Dated at Los Angeles this 12th day of July, 1957.

JOHN P. TOBIN,  
*Attorney for Appellant.*

### Certificate of Counsel.

I hereby certify that I am counsel for the appellant in the above entitled cause and that in my judgment the foregoing petition for a rehearing is well founded in point of law and in fact, as well, and that said petition is presented in good faith and is not interposed for delay.

Dated at Los Angeles this 12th day of July, 1957.

JOHN P. TOBIN,  
*Attorney for Appellant.*